IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL.

Writ Petition No. 1393 (S/S) 2003

Smt. Vidhyawati Kotnala,
W/o late Jagmohan Prasad Kotnala,
Resident of Village Ratanpur, P.O. Kumbhi Chaud Kotdwar,
District Pauri Garhwal. ..... Petitioner.

Versus

1. Union of India through.
   Secretary Ministry of Defence,
2. Chief of Army Staff,
3. C.D. A. Pension,
4. Smt. Leelawati, Pricipal (Primary School),
   R/o village Chameta Khal,
   Pauri Garhwal. .....Respondents.

Sri Gopal Narian, learned Counsel for the petitioner,
Smt. Anjali Bhargava, learned Standing Counsel for Union of India/respondents.

Hon'ble M.M. Ghildiyal, J.

Heard Sri Sri Gopal Narian, learned Counsel for the petitioner, and Smt. Anjali Bhargava, learned Standing Counsel for Union of India/respondents. Notice was issued to the respondent no. 4, but none has put in appearance on her behalf.

By means of this writ petition, the petitioner has prayed to issue a writ, in the nature of mandamus directing the respondents to release the death com retirement benefits of late Sri Jagmohan Prasad Kotnala to their minor children, who are residing with their natural guardian/ mother who is petitioner in the present petition and also for a direction to respondent no. 4 to return half of the death-cum-retirement benefits of late Jagmohan Prasad Kotnala to their minor children.

It is undisputed that after the death of Sri Jagmohan Prasad Kotnala, the retrial benefits were released in favour of the first wife, i.e. the nominee. Who is respondent no. 4 in the present petition. As the deceased has nominated respondent no. 4 as his nominee in the service records, consequently the Department has released all the amount of retirement benefits in her favour.

The respondents have submitted their counter affidavit. In para-20 of the counter affidavit, the respondents have submitted that the petitioner has a remedy to file suit before the appropriate authority for redressal of her grievances.

Learned counsel for the petitioner has contended that it is well settled law that the children of the second wife are entitled to get the pensionary benefits.

In the circumstances mentioned above, the petitioner may seek appropriate remedy by way of filing suit before the Competent Court for redressal of her grievances. The petition lacks merit and is dismissed accordingly.

(M.M. Ghilidyal, J.)

February 19, 2007:
NCM: